

REMARKS

Upon entry of the present amendment, claims 1-10 will remain pending. Claims 11-16 are withdrawn from consideration.

The Examiner rejected claims 1 and 4-10 as being unpatentable over “Quantum Electronic Meter...,” Item 164 submitted by Applicants, in view of Johnston ‘839. The Examiner asserted that the “Quantum Electronic Meter...” reference shows a meter wherein LED test pulses are produced with are representative of wathours or varhours. The pulses are produced on two separate LEDs in parallel, but does not show serial output using a single light source. The Examiner asserted that Johnston ‘839 teaches serial output using a single light source. Applicants respectfully traverse.

For the Examiner to make a rejection based on obviousness, 35 U.S.C. § 103(a) and MPEP § 2141 require adherence to the following tenets of patent law: (A) The claimed invention must be considered as a whole; (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination; (C) *The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention* and (D) Reasonable expectation of success is the standard with which obviousness is determined (emphasis added).

To establish a prima facie obviousness, MPEP §2142 requires there must first be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references when combined must teach or suggest all the claim limitations. *The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure* (emphasis added).

Claims 1 and 4-10 recite, *inter alia*, selecting one of multiple types of power and defining the same as the selected type of power; generating a pulsed test signal representative of a magnitude of a measurement of said selected type of power for testing the operation of the meter; and transmitting the pulsed test signal from the meter via an optical communications port that is operational to receive signals from sources external to the meter

whereby pulsed test signals for multiple, different types of power can be transmitted over the optical communications port.

The prior art of record does not teach, or suggest, Applicants' invention as recited in claims 1 and 4-10. The Examiner acknowledges as much in the Office Action of December 2, 2004, wherein the Examiner admitted that "Item 164 does not show serial output using a single light source." The only teaching or suggestion of this is in Applicants' own specification. The "Quantum Electronic Meter..." reference teaches away from Applicants' invention by explicitly teaching an additional LED for each additional type of power to be tested (see, section 6.1).

Johnston teaches a single type of power measurement -- kilowatt hours. Therefore, it cannot teach or suggest serially outputting multiple, different types of power. Thus, any proper combination of "Quantum Electronic Meter..." and Johnston '839 would fail to yield Applicants' invention as recited in claims 1 and 4-10. This single power measurement of Johnston '839 was noted by the Board of Appeals in a related case, Application No. 08/660,709, where the Board in its Decision on Request for Rehearing at p. 3, stated the following:

Here, Johnston's "circuit 16 totalizes and stores in the data RAM memory 34 the values of electric energy parameters to be measured including **kilowatt hours** and **kilowatt demand**" We are not persuaded that the reference's kilowatt hours and kilowatt demand represent different types of energy. (emphasis in original).

Accordingly, Applicants submit that any proper combination of the references of record fails to teach or suggest the subject matter of claims 1 and 4-10, and as such, claims 1 and 4-10 are in condition for allowance.

The Examiner rejected claims 2 and 3 under 35 U.S.C. § 103(a) as being unpatentable over "Quantum Electronic Meter..." in view of Johnston '839 and Hutt et al. The Examiner asserted that "Quantum Electronic Meter..." and Johnston '839 substantially teaches the features and limitations 2 and 3 with the exception of an energy meter that measures real, reactive and apparent power. Regarding this deficiency, the Examiner asserted that Hutt et al. teach such an electronic energy meter. Applicants respectfully traverse.

With addressing the propriety of the Examiner's rejection, Applicants note that claims 2 and 3 depend from claim 1, which Applicants believe is allowable over the prior art of record. For this reason and because claims 2 and 3 recite additional features and limitations in combination with those claim 1, Applicants believe claims 2 and 3 are allowable over the prior art of record. Accordingly, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 2 and 3 under 35 U.S.C. § 103(a).

The Examiner objected to the use of the symbol "Ke" in claims 7 and 8 asserting that it is not defined in the specification. Applicants note that the instant specification incorporates by reference to U.S. Patent No. 5,555,508, which includes a definition of "Ke." In addition, the definition of "Ke" is well known by those of ordinary skill to be "kWh per pulse." Accordingly, the Examiner is requested to reconsider and withdraw the objection to claims 7 and 8.

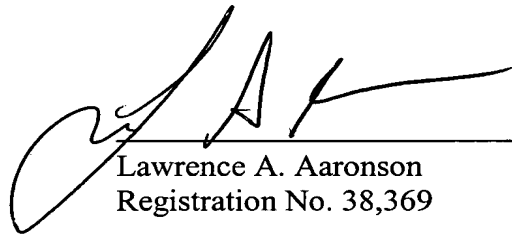
DOCKET NO.: ELSE-0817
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Office Action Dated: December 2, 2004

PATENT

CONCLUSION

It is respectfully submitted that each and every claim pending in this application patentably defines over the prior art of record. For all the foregoing reasons, Applicant respectfully submits that the instant application is in condition for allowance. Reconsideration of the present Office Action and an early Notice of Allowance are respectfully requested.

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